

AMENDED IN ASSEMBLY JUNE 13, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 27, 2012

## **SENATE BILL**

**No. 1234**

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### **Introduced by Senators De León and Steinberg**

(Principal coauthor: Assembly Member Furutani)

### **(Coauthors: Senators Hernandez, Pavley, and Price)**

(Coauthors: Assembly Members Allen, Ammiano, Blumenfield, and Solorio)

February 23, 2012

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An act to add Section 20139 to, and to add Title 21 (commencing with Section 100000) to, the Government Code, and to add Section 1088.9 to the Unemployment Insurance Code, relating to retirement savings plans, and making an appropriation therefor.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would enact the California Secure Choice Retirement Savings Trust Act, which would create the California Secure Choice Retirement Savings Trust to be administered by the California Secure Choice Retirement Savings Investment Board, which would also be established by the bill. The bill would require eligible employers, as defined, to

offer a payroll deposit retirement savings arrangement so that eligible employees, as defined, could contribute a portion of their salary or wages to a retirement savings program account in the California Secure Choice Retirement Savings Program, as specified. The bill would require eligible employees to participate in the program, unless the employee opts out of the program, as specified. *The bill would specify risk management and investment policies that the board would be subject to regarding administration of the program.* The bill would require a specified percentage of the annual salary or wages of an eligible employee participating in the program to be deposited in the California Secure Choice Retirement Savings Trust, which would be segregated into a program fund and an administrative fund, both of which would be continuously appropriated to the board for purposes of the act. The bill would limit expenditures from the administrative fund, as specified. The bill would also require the board to establish a Gain and Loss Reserve Account within the program fund.

The bill would require an employer to use the Employment Development Department exemption certificate to create an option for employees to elect to opt out of the program. The bill would, commencing 6 months after the program is ready to proceed, require the Employment Development Department to assess a penalty on any eligible employer that fails to make the program available to eligible employees, as specified. The bill also would make a statement of legislative findings. The bill would provide that the state would have no liability for the payment of the benefits under the program, as specified.

The bill would provide that the operational provisions of the California Secure Choice Retirement Savings Trust Act shall be operative only if sufficient funds are made available through a nonprofit or private entity, federal funding, or the annual Budget Act, as specified, to allow the board to study, develop, and obtain the approvals necessary to implement the program and the board determines that the program can be self-sustaining.

Existing law establishes the Board of Administration of the Public Employees' Retirement System and vests the board with various powers and duties.

This bill would authorize that board to administer funds in the California Secure Choice Retirement Savings Trust, as specified.

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares the following:

2     (a) California workers without access to an employer-sponsored  
3 retirement plan need a seamless, lifelong savings system, providing  
4 them with the opportunity to build their assets and helping them  
5 to attain their future financial stability through a program that  
6 offers secure and portable retirement savings.

7     (b) According to recent data by the University of California,  
8 Berkeley, Center for Labor Research and Education, middle class  
9 families in California are at significant risk of not having enough  
10 retirement income to meet even basic expenses, as nearly 50  
11 percent of middle-income California workers will retire at or near  
12 poverty.

13     (c) The lack of sufficient retirement savings poses a significant  
14 threat to the state's already strained safety net programs and also  
15 threatens to undermine California's fiscal stability and ongoing  
16 economic recovery.

17     (d) The looming retirement security crisis exacerbates the state's  
18 high unemployment rate, as seniors are forced to work longer and  
19 fewer jobs are available for younger workers trying to enter the  
20 workforce.

21     (e) Providing California workers with a guaranteed retirement  
22 income to supplement social security, traditionally funded by stable  
23 employer contributions via a defined benefit, employer-based  
24 pension plan, is optimal to ensure that workers accumulate the  
25 benefits they need for a secure retirement. California must pursue  
26 guaranteed replacement income programs, including defined benefit  
27 plans, for all working Californians. Establishing and offering a  
28 universal retirement savings program to provide a vital supplement  
29 to social security income would be an important step toward  
30 ensuring the retirement security of all working Californians.

31     (f) Though employer-sponsored guaranteed retirement income  
32 programs are valuable savings tools for workers, given the  
33 changing needs and work habits of California's workers, they alone  
34 are insufficient to afford workers a secure retirement. California  
35 workers need additional retirement savings options to ensure their  
36 retirement security.

(g) Private individuals have limited access to attractive financial products that allow them to convert their savings into secure, lifelong retirement income.

(h) Employers in the private sector that want to offer a retirement savings plan for their employees often face significant barriers in setting up their own workplace plans. In addition to the costs of hiring service providers and paying fees, employer-sponsored plans can be complex to maintain and administer, and they are subject to an array of rules and regulations, including fiduciary responsibility.

(i) In creating an additional retirement savings program for its workers, California would supplement existing savings options, thus assisting California's working men and women to save for retirement. This program would be funded by the program's participants without incurring liabilities to the state.

(j) The California Secure Choice Retirement Savings Trust established by this act will promote expanded retirement security for working Californians.

(k) The implementation and effectuation of the California Secure Choice Retirement Savings Trust constitutes the carrying out of a valid and vital public purpose.

SEC. 2. Section 20139 is added to the Government Code, to read:

20139. The board shall have the power to administer funds in the California Secure Choice Retirement Savings Trust pursuant to a contract with the California Secure Choice Retirement Savings Investment Board as provided in Title 21 (commencing with Section 100000) and to help all California workers to plan and save for retirement.

SEC. 3. Title 21 (commencing with Section 100000) is added to the Government Code, to read:

## TITLE 21. THE CALIFORNIA SECURE CHOICE RETIREMENT SAVINGS TRUST ACT

100000. For purposes of this title the following definitions shall apply:

(a) "Board" means the California Secure Choice Retirement Savings Investment Board.

1 (b) “California Secure Choice Retirement Savings Program” or  
2 “program” means a retirement savings program offered by the  
3 California Secure Choice Retirement Savings Trust.

4 (c) (1) “Eligible employee” means a person who is employed  
5 by an eligible employer.

6 (2) “Eligible employee” does not include:

7 (A) Any employee covered under the federal Railway Labor  
8 Act (45 U.S.C. Sec. 151), or any employee engaged in interstate  
9 commerce so as not to be subject to the legislative powers of the  
10 state, except insofar as application of this title is authorized under  
11 the United States Constitution or laws of the United States.

12 (B) Any employee covered by a valid collective bargaining  
13 agreement that expressly provides for a multiemployer Taft-Hartley  
14 pension plan.

15 (d) “Eligible employer” means a person or entity engaged in a  
16 business, industry, profession, trade, or other enterprise in the state,  
17 whether for profit or not for profit, excluding the federal  
18 government, the state, any county, any municipal corporation, or  
19 any of the state’s units or instrumentalities, that has five or more  
20 employees and that satisfies the requirements to establish or  
21 participate in a payroll deposit retirement savings arrangement.

22 (e) “Participating employer” means an eligible employer that  
23 provides a payroll deposit retirement savings arrangement provided  
24 for by this title for eligible employees.

25 (f) “Payroll deposit retirement savings arrangement” means an  
26 arrangement by which an employer allows employees to remit  
27 payroll deduction contributions to a retirement savings program.

28 (g) “IRA” means an individual retirement account or individual  
29 retirement annuity under Section 408(a) or 408(b) of Title 26 of  
30 the United States Code.

31 (h) “Stated interest rate” means the rate of interest creditable to  
32 program accounts as determined by the board pursuant to  
33 subdivision (c) of Section 100005.

34 (i) “Trust” means the California Secure Choice Retirement  
35 Savings Trust established by this title.

36 100002. (a) (1) There is hereby created within state  
37 government the California Secure Choice Retirement Savings  
38 Investment Board, which shall consist of seven members, with the  
39 Treasurer serving as chair, as follows:

40 (A) The Treasurer.

1 (B) The Director of Finance, or his or her designee.

2 (C) The Controller.

3 (D) An individual with retirement savings and investment  
4 expertise appointed by the Senate Committee on Rules.

5 (E) A small business representative appointed by the Governor.

6 (F) A public member appointed by the Governor.

7 (G) An employee representative appointed by the Speaker of  
8 the Assembly.

9 (2) Members of the board appointed by the Governor, the Senate  
10 Committee on Rules, and the Speaker of the Assembly shall serve  
11 at the pleasure of the appointing authority.

12 (b) All members of the board shall serve without compensation.  
13 Members of the board shall be reimbursed for necessary travel  
14 expenses incurred in connection with their board duties.

15 (c) A board member, program administrator, and other staff of  
16 the board shall not do any of the following:

17 (1) Directly or indirectly have any interest in the making of any  
18 investment made for the program, or in the gains or profits accruing  
19 from any investment made for the program.

20 (2) Borrow any funds or deposits of the trust, or use those funds  
21 or deposits in any manner, for himself or herself or as an agent or  
22 partner of others.

23 (3) Become an endorser, surety, or obligor on investments by  
24 the board.

25 (d) The board and the program administrator and staff shall  
26 discharge their duties with respect to the trust solely in the interest  
27 of the program participants as follows:

28 (1) For the exclusive purposes of providing benefits to program  
29 participants and defraying reasonable expenses of administering  
30 the program.

31 (2) By investing with the care, skill, prudence, and diligence  
32 under the circumstances then prevailing that a prudent person  
33 acting in a like capacity and familiar with those matters would use  
34 in the conduct of an enterprise of a like character and with like  
35 aims.

36 (e) (1) The board shall annually prepare and adopt a written  
37 statement of investment policy *that includes a risk management*  
38 *and oversight program*. The board shall consider the statement of  
39 investment policy and any changes in the investment policy at a  
40 public hearing.

1     (2) *The investment policy shall adhere to the following guiding*  
2 *principles:*

3     (A) *The primary objective of the investment policy is to preserve*  
4 *the safety of principal and provide a stable and low-risk rate of*  
5 *return.*

6     (B) *The investment policy shall mitigate risk by maintaining a*  
7 *balanced investment portfolio that provides assurance that no*  
8 *single investment or class of investments will have a*  
9 *disproportionate impact on the total portfolio.*

10    (3) *The following list represents the entire range of asset*  
11 *categories that the board may consider and the only types of*  
12 *investments which shall be permitted for the investment of funds:*

13     (A) *Domestic equities and international equities.*

14     (B) *Medium and long-term debt obligations of domestic*  
15 *corporations.*

16     (C) *United States government and government sponsored entity*  
17 *debt obligations.*

18     (D) *Real estate commingled funds that invest in publicly traded*  
19 *real estate securities.*

20     (E) *Money market instruments, cash, and money market mutual*  
21 *funds that are registered in the United States and denominated in*  
22 *United States dollars.*

23     (F) *Investments in mutual funds, but limited to existing, rated*  
24 *mutual funds, that are registered in the United States and*  
25 *denominated in United States dollars.*

26     (G) *Insurance agreements.*

27     (H) *FDIC-insured bank products.*

28    (4) *Equities shall not exceed 50 percent of the overall asset*  
29 *allocation of the fund.*

30    (5) *The investment policy shall also adhere to the following*  
31 *restrictions:*

32     (A) *Borrowing for investment purposes, or leverage, is*  
33 *prohibited.*

34     (B) *Instruments known as variable rate demand notes, floaters,*  
35 *inverse floaters, leveraged floaters, and equity-linked securities*  
36 *are not permitted. Investment in any instrument, which is commonly*  
37 *considered a “derivative” instrument, including, but not limited*  
38 *to, options, futures, swaps, caps, floors, and collars, is prohibited.*

1 (C) Contracting to sell securities not yet acquired in order to  
2 purchase other securities for purposes of speculating on  
3 developments or trends in the market is prohibited.

4 (6) The risk management and oversight program shall be  
5 designed to ensure that an effective risk management system is in  
6 place to monitor the risk levels of the California Secure Choice  
7 Retirement Savings Program investment portfolio and ensure that  
8 the risks taken are prudent and properly managed. The program  
9 shall be managed to provide an integrated process for overall risk  
10 management on both a consolidated and disaggregated basis, and  
11 to monitor investment returns as well as risk to determine if the  
12 risks taken are adequately compensated compared to applicable  
13 performance benchmarks and standards.

14 (f) The board shall approve an investment management entity  
15 or entities. Not later than 30 days after the close of each month,  
16 the board shall place on file for public inspection during business  
17 hours a report with respect to investments made pursuant to this  
18 section and a report of deposits in financial institutions. The  
19 investment manager shall report the following information to the  
20 board within 20 days following the end of the each month:

21 (1) The type of investment, name of the issuer, date of maturity,  
22 and the par and dollar amount invested in each security, investment,  
23 and money within the program fund.

24 (2) The weighted average maturity of the investments within  
25 the program fund.

26 (3) Any amounts in the program fund that are under the  
27 management of private money managers.

28 (4) Any amounts in the program fund that are under the  
29 management of the Board of Administration of the Public  
30 Employees' Retirement System.

31 (5) The market value as of the date of the report and the source  
32 of this valuation for each security within the program fund.

33 (6) A description of compliance with the statement of investment  
34 policy.

35 100004. (a) There is hereby established a retirement savings  
36 trust known as the California Secure Choice Retirement Savings  
37 Trust to be administered by the board for the purpose of promoting  
38 greater retirement savings for California private employees in a  
39 convenient, voluntary, low cost, and portable manner. The  
40 California Secure Choice Retirement Savings Trust, as a



1 self-sustaining trust, shall pay all costs of administration out of  
2 earnings on moneys on deposit therein.

3 (b) The board shall segregate moneys received by the California  
4 Secure Choice Retirement Savings Trust into two funds, which  
5 shall be identified as the program fund and the administrative fund.  
6 Notwithstanding Section 13340, moneys in the trust are hereby  
7 continuously appropriated, without regard to fiscal years, to the  
8 board for the purposes of this title.

9 (c) Moneys in the program fund may be invested or reinvested  
10 by the Treasurer or may be invested in whole or in part under  
11 contract with the Board of Administration of the Public Employees'  
12 Retirement System, or private money managers, or both, as  
13 determined by the board.

14 (d) Transfers may be made from the program fund to the  
15 administrative fund for the purpose of paying operating costs  
16 associated with administering the trust and as required by this title.  
17 On an annual basis, expenditures from the administrative fund  
18 shall not exceed more than 1 percent of the total program fund.  
19 All costs of administration of the trust shall be paid out of the  
20 administrative fund.

21 (e) Any contributions paid by employees and employers into  
22 the trust shall be used exclusively for the purpose of paying benefits  
23 to the participants of the California Secure Choice Retirement  
24 Savings Program, for the cost of administration of the program,  
25 and for investments made for the benefit of the program.

26 100004.5. (a) The board shall establish a segregated account  
27 within the program fund to be known as the Gain and Loss Reserve  
28 Account, and the board shall have sole authority over the account.  
29 The Gain and Loss Reserve Account shall be maintained for the  
30 program and may be used to credit interest at the stated interest  
31 rate for program years in which the board determines that the stated  
32 interest rate cannot be met from investment earnings.

33 (b) The board shall establish a goal for the balance of the Gain  
34 and Loss Reserve Account and shall periodically review the  
35 sufficiency of the reserve account based on the recommendations  
36 of the board's actuary.

37 (c) The board may allocate excess earnings of the program with  
38 respect to assets attributable to the program to the Gain and Loss  
39 Reserve Account. In addition, the board may allocate any liability  
40 gains and losses to the Gain and Loss Reserve Account. Based on

1 an actuarial valuation following each program year, the board shall  
2 determine annually the amount, if any, that is to be allocated to  
3 the Gain and Loss Reserve Account for that program year. In  
4 determining whether to allocate excess earnings to the Gain and  
5 Loss Reserve Account, the board shall consider all of the following:

6 (1) Whether or not the program has excess earnings.

7 (2) The sufficiency of the Gain and Loss Reserve Account in  
8 light of the goal established pursuant to subdivision (b).

9 (3) The amount required for the program's administrative costs.

10 (4) The amount required for crediting individuals' accounts at  
11 the stated interest rate.

12 (d) In determining whether to allocate liability gains and losses  
13 to the Gain and Loss Reserve Account, the board shall consider  
14 the matters described in paragraphs (2), (3), and (4) of subdivision  
15 (c).

16 100005. (a) The California Secure Choice Retirement Savings  
17 Program shall include, as determined by the board, one or more  
18 payroll deposit retirement savings arrangements.

19 (b) Individual accounts under the California Secure Choice  
20 Retirement Savings Program shall be nominal accounts. Individual  
21 contributions and any employer contributions on behalf of the  
22 individual that are specifically identified as creditable to the  
23 program shall be treated as credits to the individual's California  
24 Secure Choice Retirement Savings Program account, together with  
25 interest credited at the stated interest rate and any additional  
26 earnings credited thereon. The balance of the credits in an  
27 individual's account shall determine the amount to which the  
28 individual is entitled under the program upon termination of  
29 coverage by the program. The individual shall not have the right  
30 or claim to any specific assets of the account, program, or program  
31 fund.

32 (c) (1) Prior to July 1 of the initial program year, and prior to  
33 the beginning of each program year thereafter, the board shall  
34 adopt a program amendment with respect to the program to declare  
35 the stated rate at which interest shall be credited to program  
36 accounts for the following program year.

37 (2) Interest shall be credited to program accounts and shall be  
38 computed at the stated interest rate on the balance of credits in an  
39 individual's account and shall be compounded daily.

1 (d) An individual's retirement savings benefit under the program  
2 shall be an amount equal to the balance of the credits in the  
3 individual's program account on the date the retirement savings  
4 benefit becomes payable.

5 100006. (a) The board, in the capacity of trustee, shall have  
6 the power and authority to do all of the following:

7 (1) Make and enter into contracts necessary for the  
8 administration of the trust.

9 (2) Adopt a seal and change and amend it from time to time.

10 (3) Cause moneys in the program fund to be held and invested  
11 and reinvested.

12 (4) Accept any grants, gifts, legislative appropriation, and other  
13 moneys from the state, any unit of federal, state, or local  
14 government or any other person, firm, partnership, or corporation  
15 for deposit to the administrative fund or the program fund.

16 (5) Appoint a program administrator and determine the duties  
17 of the program administrator and other staff as necessary and set  
18 their compensation.

19 (6) Make provisions for the payment of costs of administration  
20 and operation of the trust.

21 (7) Employ staff.

22 (8) Retain and contract with the Board of Administration of the  
23 Public Employees' Retirement System, private financial  
24 institutions, other financial and service providers, consultants,  
25 actuaries, counsel, auditors, third-party administrators, and other  
26 professionals as necessary.

27 (9) Procure insurance against any loss in connection with the  
28 property, assets, or activities of the trust, and secure private  
29 underwriting and reinsurance to manage risk and insure the  
30 retirement savings benefit.

31 (10) Procure insurance indemnifying each member of the board  
32 from personal loss or liability resulting from a member's action  
33 or inaction as a member of the board.

34 (11) Set minimum and maximum investment levels.

35 (12) Collaborate and cooperate with the Board of Administration  
36 of the Public Employees' Retirement System, private financial  
37 institutions, service providers, and business, financial, trade,  
38 membership, and other organizations to the extent necessary or  
39 desirable for the effective and efficient design, implementation,

1 and administration of the program and to maximize outreach to  
2 eligible employers and eligible employees.

3 (13) Cause expenses incurred to initiate, implement, maintain,  
4 and administer the program to be paid from contributions to, or  
5 investment returns or assets of, the program or arrangements  
6 established under the program, to the extent permitted under state  
7 and federal law.

8 (14) Facilitate compliance by the retirement savings program  
9 or arrangements established under the program with all applicable  
10 requirements for the program under the Internal Revenue Code of  
11 1986, including tax qualification requirements or any other  
12 applicable law and accounting requirements, including providing  
13 or arranging for assistance to program sponsors and individuals  
14 in complying with applicable law and tax qualification  
15 requirements in a cost-effective manner.

16 (15) Carry out the duties and obligations of the California Secure  
17 Choice Retirement Savings Trust pursuant to this title and exercise  
18 any and all other powers as may be reasonably necessary for the  
19 effectuation of the purposes, objectives, and provisions of this title  
20 pertaining to the trust.

21 (b) The board shall adopt regulations it deems necessary to  
22 implement this title consistent with the federal Internal Revenue  
23 Code and regulations issued pursuant to that code to ensure that  
24 the program meets all criteria for federal tax-deferral or tax-exempt  
25 benefits, or both.

26 100008. In addition to the powers and authority granted to the  
27 board pursuant to Section 100006, the board shall have the power  
28 and authority to do the following:

29 (a) Cause the retirement savings program or arrangements  
30 established under the program to be designed, established, and  
31 operated, in a manner consistent with all of the following:

32 (1) In accordance with best practices for retirement savings  
33 vehicles.

34 (2) To maximize participation, saving, and sound investment  
35 practices, and appropriate selection of default investments.

36 (3) With simplicity, ease of administration for participating  
37 employers, and portability of benefits.

38 (b) Arrange for collective, common, and pooled investment of  
39 assets of the retirement savings program or arrangements, including  
40 investments in conjunction with other funds with which those

1 assets are permitted to be collectively invested, with a view to  
2 saving costs through efficiencies and economies of scale.

3 (c) Explore and establish investment options that offer  
4 employees guaranteed returns on contributions and the conversion  
5 of retirement savings account balances to secure retirement income  
6 without incurring debt or liabilities to the state.

7 (d) Disseminate educational information concerning saving and  
8 planning for retirement.

9 (e) Disseminate information concerning the tax credits available  
10 to small business owners for establishing new retirement plans  
11 and the federal Retirement Savings Contribution Credit (Saver's  
12 Credit) available to lower and moderate-income households for  
13 qualified savings contributions.

14 (f) Submit progress and status reports to participating employers  
15 and eligible employees.

16 (g) If necessary, determine the eligibility of an employer,  
17 employee, or other individual to participate in the program.

18 (h) Evaluate and establish the process by which an eligible  
19 employee of an eligible employer is able to contribute a portion  
20 of his or her salary or wages to the program for automatic deposit  
21 of those contributions and the participating employer provides a  
22 payroll deposit retirement savings arrangement to forward the  
23 employee contribution and related information to the program or  
24 its agents. This may include, but is not limited to, financial services  
25 companies and third-party administrators with the capability to  
26 receive and process employee information and contributions for  
27 payroll deposit retirement savings arrangements or other  
28 arrangements authorized by this title.

29 (i) Design and establish the process for the enrollment of  
30 program participants.

31 (j) Allow participating employers to use the program to  
32 contribute to the account on their employees' behalf or match their  
33 employees' contributions.

34 (k) Evaluate and establish the process by which an individual  
35 or an employee of a nonparticipating employer may enroll and  
36 make contributions to the program.

37 100009. (a) Prior to opening the California Secure Choice  
38 Retirement Savings Program for enrollment, the board shall design  
39 and disseminate to employers through the Employment  
40 Development Department (EDD) an employee information packet.

1 The packet shall include background information on the program  
2 and appropriate disclosures for employees.

3 (b) The disclosure form shall include, but not be limited to, all  
4 of the following:

5 (1) The benefits and risks associated with making contributions  
6 to the program.

7 (2) The mechanics of how to make contributions to the program.

8 (3) How to opt out of the program.

9 (4) The process for withdrawal of retirement savings.

10 (5) How to obtain additional information on the program.

11 (c) In addition, the disclosure form shall clearly articulate the  
12 following:

13 (1) Employees seeking financial advice should contact financial  
14 advisors, that employers are not in a position to provide financial  
15 advice, and that employers are not liable for decisions employees  
16 make pursuant to Section 100016.

17 (2) The program fund is privately insured and is not guaranteed  
18 by the State of California.

19 (d) The disclosure form shall include a signature line for the  
20 employee to sign and date acknowledging that the employee has  
21 read all of the disclosures and understands their content.

22 (e) The employee information packet shall be made available  
23 to employers through EDD and supplied to employees at the time  
24 of hiring. All new employees shall review the packet and  
25 acknowledge having read it by signing the signature line  
26 accompanied by the date of the signature.

27 (f) The employee information packet shall be supplied to  
28 existing employees when the program is initially launched for that  
29 participating employer pursuant to Section 100010 and employees  
30 shall review and sign the disclosure form at that time.

31 100010. (a) After the board opens the California Secure Choice  
32 Retirement Savings Program for enrollment, any employer may  
33 choose to have a payroll deposit retirement savings arrangement  
34 to allow employee participation in the program.

35 (b) Beginning three months after the board opens the program  
36 for enrollment, eligible employers with more than 100 eligible  
37 employees and that do not offer an employer-sponsored retirement  
38 plan or automatic enrollment payroll deduction IRA shall have a  
39 payroll deposit retirement savings arrangement to allow employee  
40 participation in the program.

1 (c) Beginning six months after the board opens the program for  
2 enrollment, eligible employers with more than 50 eligible  
3 employees and that do not offer an employer-sponsored retirement  
4 plan or automatic enrollment payroll deduction IRA shall have a  
5 payroll deposit retirement savings arrangement to allow employee  
6 participation in the program.

7 (d) Beginning nine months after the board opens the program  
8 for enrollment, all other eligible employers that do not offer an  
9 employer-sponsored retirement plan or automatic enrollment  
10 payroll deduction IRA shall have a payroll deposit retirement  
11 savings arrangement to allow employee participation in the  
12 program.

13 (e) (1) Each eligible employee shall be enrolled in the program  
14 unless the employee elects not to participate in the program. An  
15 eligible employee may elect to opt out of the program by making  
16 a notation on the exemption certificate produced by the  
17 Employment Development Department.

18 (2) Following initial implementation of the program pursuant  
19 to this section, at least once every two years, participating  
20 employers shall designate an open enrollment period during which  
21 eligible employees that previously opted out of the program shall  
22 be enrolled in the program unless the employee again elects to opt  
23 out as provided in this subdivision.

24 (3) An employee who elects to opt out of the program who  
25 subsequently wants to participate through the employer's payroll  
26 deposit retirement savings arrangement may only enroll during  
27 the employer's designated open enrollment period or if permitted  
28 by the employer at an earlier time.

29 (f) Employers shall retain the option at all times to set up any  
30 type of employer-sponsored retirement plan, such as a defined  
31 benefit plan or a 401(k) plan, or offer an automatic enrollment  
32 payroll deduction IRA, instead of having a payroll deposit  
33 retirement savings arrangement to allow employee participation  
34 in the California Secure Choice Retirement Savings Program.

35 (g) An eligible employee may also terminate his or her  
36 participation in the program at any time in a manner prescribed  
37 by the board and thereafter by making a notation on the exemption  
38 certificate produced by the Employment Development Department.

1 (h) Unless otherwise specified by the employee, a participating  
2 employee shall contribute 3 percent of the employee's annual  
3 salary or wages to the program.

4 (i) By regulation, the board may adjust the contribution amount  
5 set in subdivision (h) to no less than 2 percent and no more than  
6 4 percent and may vary that amount within that 2 percent to 4  
7 percent range for participating employees according to the length  
8 of time the employee has contributed to the program.

9 100016. (a) Employers shall not have any liability for an  
10 employee's decision to participate in, or opt out of, the California  
11 Secure Choice Retirement Savings Program, or for the investment  
12 decisions of employees whose assets are deposited in the program.

13 (b) Employers shall not be a fiduciary, or considered to be a  
14 fiduciary, over the California Secure Choice Retirement Savings  
15 Trust or the program. An employer shall not bear responsibility  
16 for the administration, investment, or investment performance of  
17 the program. An employer shall not be liable with regard to  
18 investment returns, program design, and benefits paid to program  
19 participants.

20 (c) An employer's voluntary contribution to the program on  
21 behalf of an employee shall not in any way contradict the  
22 provisions of this section or change the employer's relationship  
23 to the program or an employer's obligations to employees.

24 100017. The state shall not have any liability for the payment  
25 of the retirement savings benefit that is guaranteed to program  
26 participants pursuant to this title. Any financial liability for the  
27 payment of benefits in excess of funds available under the program  
28 shall be borne by the underwriters pursuant to the contract entered  
29 into with the board on behalf of the program participants. The  
30 state, and any of the funds of the state, shall have no obligation  
31 for payment of the guaranteed benefits arising from this title.

32 100018. (a) Notwithstanding Section 10231.5, the board shall  
33 submit an annual audited financial report, prepared in accordance  
34 with generally accepted accounting principles, on the operations  
35 of the California Secure Choice Retirement Savings Trust by  
36 August 1 to the Governor, the Controller, the State Auditor, and  
37 the Legislature, pursuant to Section 9795. The annual audit shall  
38 be made by an independent certified public accountant and shall  
39 include, but not be limited to, direct and indirect costs attributable



1 to the use of outside consultants, independent contractors, and any  
2 other persons who are not state employees.

3 (b) The annual audit shall be supplemented by the following  
4 information prepared by the board:

5 (1) Any studies or evaluations prepared in the preceding year.

6 (2) A summary of the benefits provided by the trust including  
7 the number of participants in the trust.

8 (3) Any other information that is relevant in order to make a  
9 full, fair, and effective disclosure of the operations of the California  
10 Secure Choice Retirement Savings Trust.

11 100022. The board shall initially conduct a market analysis to  
12 determine whether the necessary conditions for implementation  
13 of this title can be met, including, but not limited to, likely  
14 participation rates, participants' comfort with various investment  
15 vehicles and degree of risk, contribution levels, and the rate of  
16 account closures and rollovers. The board shall conduct this  
17 analysis only if sufficient funds are made available through a  
18 nonprofit or private entity, or from federal funding. The board  
19 shall forward its findings to the Chair of the Senate Committee on  
20 Labor and Industrial Relations, the Chair of the Senate Committee  
21 on Public Employment and Retirement, and the Chair of the  
22 Assembly Committee on Public Employees, Retirement and Social  
23 Security.

24 100024. With the exceptions of subdivision (a) of Section  
25 100002, and Sections 100022 and 100026, the provisions of this  
26 title shall become operative only if funds are made available  
27 through a nonprofit or private entity, federal funding, or an annual  
28 Budget Act appropriation in amounts sufficient to allow the board  
29 to study, develop, and obtain the approvals necessary to implement  
30 this title and the board notifies the Director of Finance that, based  
31 on its market analysis, the provisions of this title can be  
32 self-sustaining pursuant to this title.

33 100026. This title shall be construed liberally in order to  
34 effectuate its legislative intent. The purposes of this title and all  
35 of its provisions with respect to the powers granted shall be broadly  
36 interpreted to effectuate that intent and purposes and not as to any  
37 limitation of powers.

38 SEC. 4. Section 1088.9 is added to the Unemployment  
39 Insurance Code, to read:

1 1088.9. (a) The department shall have the power and duties  
2 necessary to administer the enforcement of employer compliance  
3 with Title 21 (commencing with Section 100000) of the  
4 Government Code.

5 (b) An eligible employer shall use the department's exemption  
6 certificate to create an option for an eligible employee to note his  
7 or her decision to opt out of utilizing the California Secure Choice  
8 Retirement Savings Program. The department shall make the  
9 opt-out notation simple and concise and in a manner it deems  
10 necessary to appropriately evidence the employee's understanding  
11 that he or she is choosing not to automatically deduct earnings to  
12 save for retirement.

13 (c) Each eligible employer who, without good cause, fails to  
14 allow its eligible employees to participate in the California Secure  
15 Choice Retirement Savings Program pursuant to Sections 100009  
16 and 100010 of the Government Code, on or before 90 days after  
17 service of notice by the director pursuant to Section 1206 of his  
18 or her failure to comply, shall pay a penalty of two hundred fifty  
19 dollars (\$250) per eligible employee if noncompliance extends 90  
20 days or more after the notice, and if found to be in willful  
21 noncompliance 180 days or more after the notice, an additional  
22 penalty of five hundred dollars (\$500) per eligible employee.

23 (d) The department shall enforce this penalty as part of its  
24 existing investigation and audit function.

25 (e) The provisions of this article, the provisions of Article 9  
26 (commencing with Section 1176), with respect to refunds and  
27 overpayments, and the provisions of Article 11 (commencing with  
28 Section 1221), with respect to administrative appellate review shall  
29 apply to the penalty imposed by this section. Penalties collected  
30 pursuant to this section shall be deposited in the contingent fund.

31 (f) This section shall become operative six months after the  
32 board notifies the Director of the Employment Development  
33 Department that the full implementation of Title 21 (commencing  
34 with Section 100000) of the Government Code will proceed. Upon  
35 receipt of the notification from the board, the department shall  
36 immediately post on its Internet Web site a notice stating that this  
37 section is operative, and the date that it is first operative.

38 (g) If the department participates in the implementation and  
39 administration of the program, it may charge the board a reasonable

1 fee for costs it incurs for implementing and administering the  
2 program.

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